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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,339	02/06/2004	Eugene A. Helmsie	60,137-207;136-3032-U	5319

26096 7590 12/21/2006
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EXAMINER

LE, HUYEN D

ART UNIT	PAPER NUMBER
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3751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/21/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/774,339

Applicant(s)

HELMETSIE ET AL.

Examiner

Huyen Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-15, 18, 19 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-15, 18-19 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 14-15, 18-19, 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Armstrong (2,036,184).

Regarding claim 19, the Armstrong reference discloses a surround comprising a base portion (a floor portion of a room); a first wall portion (the left wall of the room); a second wall portion (the right wall of the room); and a corner portion (formed by the meeting portions of the walls including member 1) engaged with the base portion, the first wall portion and the second wall portion, the corner portion comprising a multiple of horizontal shelf slots (between members 8,9,10) arranged vertically along a length of the corner portion, wherein the horizontal shelf slots comprise at least partially arcuate openings in the corner portion to support a corresponding multiple of shelves.

The introductory statement of the intended use have been carefully considered but deemed not to impose any structural limitations on the claim(s) distinguishable over the device of Armstrong which is capable of being used in a bathroom or shower surround.

Regarding to claim 21, at least one of the partially arcuate openings is defined by an upper wall portion 8, a lower wall portion 9 and an arcuate rear wall portion 1.

Regarding claim 22, one of the partially arcuate openings includes a uniform nominal depth extending into the corner portion.

Regarding claim 23, each of the partially arcuate openings is adapted to support one of the corresponding multiple of shelves.

Regarding claim 24, the corner portion, the upper wall portion 8, the lower wall portion 9, the arcuate rear wall portion 1 comprise a single continuous piece.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 13-15, 18-19 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitamura et al (4,718,131) in view of Randall (4,886,236).

Regarding claim 19, the Kitamura et al reference discloses a shower surround comprising a base portion R2; a first wall portion r1; a second wall portion r2; and a corner portion R1 engaged with the base portion R2, the first wall portion r1 and the second wall portion r2, the corner portion R1 comprising a multiple of horizontal shelves 29b and 29c removably arranged vertically along a length of the corner portion (Fig. 13), wherein pins 30 in the corner portion R1 support the shelves.

Although the Kitamura et al reference does not disclose partially arcuate openings in the corner for supporting the shelves, attention is directed to the Randall reference which teaches supporting means for securing a shelf to a wall comprising a

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bracket 25 having a first arm 33 and a second arm 35 and an arcuate opening 27 therebetween a support a shelf.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute brackets for the pins of the Kitamura et al shelves in view of the teaching of the Randall reference for supporting the shelves in the corner wall, wherein so doing would amount a mere substitution of one functional equivalent supporting means for another within the same art that would work equally well in the Kitamura et al shower device.

Regarding claim 13, at least two support brackets 25, which are needed on sides on the shelf unit of Kitamura et al, with opening 27 would constitute segmented slots. Regarding to claim 21, at least one of the partially arcuate openings is defined by an upper wall portion 8, a lower wall portion 9 and an arcuate rear wall portion 1.

Regarding to claim 21, at least one of the partially arcuate openings 27 is defined by an upper wall portion 33, a lower wall portion 35 and an arcuate rear wall portion 29.

Regarding claim 22, one of the partially arcuate openings 27 includes a uniform nominal depth extending into the corner portion.

Regarding claim 23, each of the partially arcuate openings is adapted to support one of the corresponding multiple of shelves.

Regarding claim 24, the corner portion R1, the upper wall portion 33, the lower wall portion 35, the arcuate rear wall portion 39 comprise a single continuous piece (after being assembled together).

Response to Arguments

5. Applicant's arguments on 10/09/2006 with respect to claim 19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Huyen Le
Primary Examiner
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